STATE OF CALIFORNIA

240.0033

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082)
TELEPHONE (916) 327-2291
FAX (916) 323-3387

December 23, 1996

Mr. A--- N. R---
M---, R-- & Co., L.L.C.
Certified Public Accountants
XXXX --- ---, Suite XXX
---, OR XXXXX

Re: Florist Delivery Service

Dear Mr. R---:

This is in response to your letter of October 23, 1996 in which you inquire about the application of California's Sales and Use Tax Laws on sales of flowers facilitated through a tele-florist.

You state that your client, a California corporation with headquarters in California, intends to become a competitor of FTD. You explain that your client's customers will be able to place orders through an "800" number and that at the time the order is taken the customer's credit card will be billed for the purchase. Your client will contact an associate in the delivery area to prepare and deliver the floral arrangement which will be billed to your client at wholesale cost. You further state that your client is not a florist and does not maintain any inventory of flowers or plants. By this statement, I assume that you mean that your client does not actually prepare any of the floral arrangements which are ordered by its customers. However, this fact, alone, would not preclude your client from being considered a retailer of floral arrangements.

A "retailer" is defined as every "seller" who makes any retail sale of tangible personal property (Rev. & Tax Code § 6015). A "seller" is defined to include every person engaged in the business of selling such property of a kind the gross receipts from the retail sale of which are required to be included in the measure of sales tax (Rev. & Tax. Code § 6014). California courts have consistently held that persons making sales of tangible personal property which is delivered by the manufacturer or creator of the property will nonetheless by considered retailers if they hold themselves out as the suppliers of the merchandise purchased. (See Meyer *v*. State Board of

Equalization (1954) 42 Cal.2d 376 and Bank of America *v.* State Board of Equalization (1962) 209 Cal.App. 2d. 780.) Similarly, Business Taxes Law Guide Annotation 480.0220 (12/4/53) concluded that California television and radio stations which processed orders for merchandise through designated phone banks located at their facilities were retailers. This annotation explains:

> "Radio and television stations may become retailers and subject to sales tax with respect to mail order sales of merchandise made as a result of advertising made over such stations as follows:
>
> (a) The merchandise sold is mailed directly to the purchaser from a point outside California. Payment is made either C.O.D. or is sent with the order to such stations.
>
> (b) The aforesaid sale has been initiated when the advertising directs the prospective purchaser to place an order by telephoning a certain number and this number is that of the station and is serviced by station employees and the advertising does not disclose the identity of the out-of-state seller.
>
> (c) Like principles apply to orders received at such stations by mail."

As in the facts of Annotation 480.0220, your client, which is headquartered in California, will direct its customers to place orders for flowers to its designated "800" number. Your client will bill its customers at the time the order is taken and will place the order with an unidentified vendor who will ship the flowers to the intended recipient. While Annotation 480.0220 focuses on the fact that the purchaser does not know the identity of the party that supplies the merchandise, in Meyer *v.* State Board of Equalization (supra), the court was not concerned whether the purchaser knew the source of the merchandise. The Meyer court, in finding that the party that solicited the order was a California retailer, based its decision on its conclusion that these transactions constituted sales for resale from the supplier to the solicitor followed by a subsequent retail sale by the solicitor to the purchaser. (See Meyer *v.* State Board of Equalization, supra, pp. 382-383.) From the limited information you have provided it appears that these transactions come within the facts of the Meyer case and that your client is a retailer, who purchases, for resale, the flowers from the delivering florist. This conclusion is further supported by your statement that your client will be billed, by the delivering florist, "on a wholesale basis."

You request advice on the application of California's Sales and Use Tax Laws under the following six scenarios.

"a. Customer is a non-resident of California, orders flowers to be delivered to a state other than the state of California.

"b. Facts same as a. except customer is a California resident.

"c. Facts same as a. except delivery is in California, customer is a non-resident.

"d. Both customer and delivery is in the state of California.

"e. Our client is headquartered in Oregon, has no physical presence in the state of California, receives an order from a resident of the state of California via the 800 number for delivery to another state.

"f. Our client is an Oregon resident corporation, receives order from Montana resident for ultimate delivery in California."

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property in California unless specifically excluded from taxation by statute. (Rev. & Tax. Code § 6051.) When sales tax does not apply, use tax applies to the storage, use or consumption of property purchased from a retailer for use in California. (Rev. & Tax. Code §§ 6201, 6401.) The rule applicable to sales by persons engaged in the business of selling plants, flowers, wreaths and floral arrangements pursuant to orders received from both inside and outside the state is set forth in Sales and Use Tax Regulation 1571:

"Tax applies to amounts charged by a florist to his customers for the delivery of flowers, wreaths, etc., to points within California, even though he instructs another florist to make the delivery, but in such case tax does not apply to amounts received by the florist making the delivery.

"Tax applies to amounts charged by florists who receive orders for the delivery of flowers, wreaths, etc. to points outside this state and instruct florists outside this state to make the delivery.

"....

"Tax does not apply to amounts received by California florists who make deliveries in this state pursuant to instructions received from florists outside this state."

In summary, Regulation 1571 provides that sales tax applies to all orders for floral delivery received by persons doing business in this state who instruct another florist to make the delivery regardless of whether the flowers are to be delivered inside or outside of California. This regulation does not consider the residency of the person placing the order for the flowers.

Thus, under Regulation 1571 sales tax applies to the scenarios described in "a." through "d." As to the scenarios described in "e." and "f.," in which you state that your client is headquartered in Oregon and has no physical presence in this state, California sales tax will not apply to any of the orders taken at the Oregon location regardless of the place of delivery or the residency of the person placing the order. The laws of the state in which your client will be accepting the floral orders will govern the taxability of your client's sale of the floral arrangements.

Under the first four scenarios, the measure of tax on such orders must include charges made for telegrams, telephone calls and any "relay" or other service charge whether or not these charges are separately stated. (Reg. 1571.) If you have any further questions please feel free to contact this office again.

Sincerely,

Patricia Hart Jorgensen
Senior Tax Counsel

PHJ:cl

cc: Out-of-State District Administrator